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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of	)	
	)	Arizona Supreme Court No. R-_____
PETITION TO AMEND RULE 13,	)	
RULES OF PROCEDURE FOR	)	PETITION TO AMEND RULE 13,
JUDICIAL REVIEW OF	)	RULES OF PROCEDURE FOR
ADMINISTRATIVE DECISIONS	)	JUDICIAL REVIEW OF
	)	ADMINISTRATIVE DECISION
_____	)	

**PETITION**

Pursuant to Rule 28, Rules of the Supreme Court, the undersigned  
petition the Court to adopt amendments to Rule 13 of the Arizona Rules of  
Procedure for Judicial Review of Administrative Decisions ("ARPJRAD") as

reflected in the attachment hereto, effective as soon as possible but no later than January 1, 2020.

## **I. SUMMARY OF PROPOSED CHANGES**

This petition seeks to resolve an appellate jurisdiction issue created by comprehensive changes to ARPJRAD effective January 1, 2018.

The Arizona Court of Appeals has an independent duty to determine its jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465 (App. 1997). Accordingly, among other things, one of the Court's staff attorneys examines the basis for jurisdiction in every civil case. This year, an issue has arisen with respect to jurisdiction over appeals from the superior court's decisions in administrative appeals because it is unclear whether such decisions must comply with Arizona Rule of Civil Procedure ("Civil Rule") 54(b) or 54(c).

Civil Rule 54(b) provides that a superior court may "direct the entry of final judgment as to one or more but fewer than all of the claims or parties" in a case "upon an express determination that there is no just reason for delay and upon an express direction for the entry of [a final] judgment." Civil Rule 54(c) provides that "[a] judgment shall not be final unless the court states that no further matters remain pending and that the judgment is

entered pursuant to Rule 54(c).” A superior court ruling must include either Civil Rule 54(b) or (c) language for the ruling to be appealable as a “final judgment” under Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(1). *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 428, ¶ 12 (App. 2016).

The ARPJRAD govern the procedure in all appeals from final administrative decisions brought to the superior court pursuant to A.R.S. §§ 12-901 to -914. *See* ARPJRAD 1(a). Before January 1, 2018, the ARPJRAD provided that the Civil Rules applied to appeals from final administrative decisions brought to the superior court pursuant to A.R.S. §§ 12-901 to -914, unless the Civil Rules were inconsistent with the ARPJRAD. *See* ARPJRAD 1(b) (2017). By statute, “[t]he final decision, order, judgment or decree of the superior court entered in an action to review a decision of an administrative agency may be appealed.” A.R.S. § 12-913. Accordingly, *Brumett* held that absent compliance with Civil Rule 54(b) or (c), a final decision, order, judgment, or decree entered by a superior court in an action to review an administrative agency’s decision is not appealable under A.R.S. § 12-913. 240 Ariz. at 431, ¶ 22.

Effective January 1, 2018, the ARPJRAD were comprehensively revised when the Court granted a Petition to amend the rules filed as the result of work by the State Bar of Arizona's JRAD Rules Study Group. That revision reversed the previous presumption that the Civil Rules apply to administrative appeals, with the new (and current) ARPJRAD expressly stating the Civil Rules "do not apply" "[e]xcept as provided elsewhere in these rules." ARPJRAD 1(b).

The ARPJRAD do not specify what type of ruling by the superior court, in a case governed by the ARPJRAD, is appealable. As a result, this revision has created uncertainty about what rulings by the superior court are appealable to the appellate courts because it indicates Civil Rules 54(b) and (c) do not apply to ARPJRAD cases. Without referencing Civil Rule 54(b) or (c), there is no indication whether the superior court's ruling is a "final decision, order, judgment or decree." *See* A.R.S. § 12-913 (authorizing appellate jurisdiction for "final" decisions, orders, judgments or decrees issued by the superior court for judicial review of administrative decisions under Arizona's Administrative Review Act); *see also* Greg Harris & Patricia Seguin, *What Litigants in Arizona Need to Know about the New JRAD Rules*, ARIZONA ATTORNEY 25, 31 (Oct. 2018) (article, co-written by Chair of, and

Staff to, State Bar of Arizona's JRAD Rules Study Group, noting this uncertainty, adding "[c]onsideration may need to be given to either expressly making [Civil] Rule 54(c) applicable to judicial review actions or for the adoption of a rule under the JRAD Rules that mirrors [Civil] Rule 54(c)").

In August 2018, the Court amended the ARPJRAD effective January 1, 2019, to include a new rule stating that appeals from superior court decisions governed by ARPJRAD "must be to the court of appeals in the first instance." ARPJRAD 13. This new rule will provide helpful guidance to litigants about which appellate court will consider such an appeal, but it does not resolve the "final decision, order, judgment or decree" issue created by the changes to the ARPJRAD effective January 1, 2018.

This Petition seeks changes to ARPJRAD 13 to make explicit that a party seeking to appeal to the appellate court a superior court decision in an administrative appeal may only appeal a ruling that complies with Civil Rule 54(b) or (c). In addition, the Petition suggests changes so that the text of ARPJRAD 13 mirrors the "final decision, order, judgment or decree" language used in A.R.S. § 12-913. Finally, to add clarity, the Petition suggests that ARPJRAD 13 be split into two subparts: (a) (addressing the applicability

of the Arizona Rules of Civil Appellate Procedure in appeals from a final decision, order, judgment or decree from the superior court, which shall be taken to the Court of Appeals) and (b) (providing that any superior court ruling must comply with Civil Rule 54(b) or (c) to be appealable).

In preparing these proposed changes, Petitioners have consulted with Division One and Division Two of the Arizona Court of Appeals, members of the Arizona Supreme Court Staff Attorneys' Office, and members of the State Bar of Arizona's JRAD Rules Study Group and have incorporated changes suggested from those groups. In addition, Petitioners understand that members of those groups individually either support the proposed changes or at least do not oppose the proposed changes.

## **II. TEXT OF PROPOSED CHANGES**

It is therefore proposed that Rule 13, Arizona Rules of Procedure for Judicial Review of Administrative Decisions, be modified to provide as follows (with deletions in strikeout and additions underlined):

### **Rule 13. Appeal from a Superior Court Decision**

(a) The Arizona Rules of Civil Appellate Procedure apply to appeals from ~~the~~ a final decision, order, judgment, or decree of the superior court in an action to review a final administrative decision. Such appeals must be to the court of appeals in the first instance.

(b) No final decision, order, judgment, or decree issued in a superior court action to review a final administrative decision may be appealed unless it complies with Arizona Rule of Civil Procedure 54(b) or (c).

DATED this 19th day of December, 2018.

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